

Cohen, Dippell and Everist, P.C.

In the Matter of)
Second Periodic Review)
of the Commission's Rules)
and Policies Affecting the)
Conversion to Digital Television)

MB Docket No. 03-15

Notice of Proposed Rule Making

These comments are submitted on behalf of Cohen, Dippell and Everist, P.C. ("CDE") and are in response to the Federal Communications Commission ("FCC") Notice of Proposed Rule Making ("NPRM") *In The Matter of the Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television* ("Periodic Review").

The FCC is to be applauded on the progress of implementing DTV service since the release in January 2001 of the *First DTV Periodic Review* R&O. Further, the FCC is to be commended on their quest for further information on the various issues outlined in the Periodic Review. The following offers comments on several items raised in the NPRM. Generally, comments are directed to issues arising on replication and implementation and from allocation both domestic and international.

Replication

The FCC in Paragraph 25 indicates that, "*We continue to believe that stations that choose to begin service at lower power should be given an opportunity to increase power and to test for interference or other service problems at those power levels before they are required to decide which of their two channels is preferable for DTV operations.*"

This is the crux of many issues facing not only broadcasters, but consumers of DTV receivers. For broadcasters, it is necessary to allow sufficient time to elapse so that stations can make a

comprehensive and effective determination of their effective radiated power necessary to provide dependable off-the-air DTV service. Furthermore, this additional time will also permit broadcasters to perform an assessment and determine the impact to DTV receivers as the effective radiated power of the DTV stations are increased. In order to avoid future difficulties, the assessment needs to be made when there are sufficient distribution of DTV sets throughout the DTV service area. Documentation of the range of installation at individual homes and their experience will permit the gathering of a body of knowledge whether the DTV receiver is close to or distant from the DTV transmitter site. Further, this consumer experience will be in various environmental settings whether rural, suburban, mountainous, rolling terrain area, etc. Also different propagation paths can be examined whether along coastal areas, flat, or rugged terrain.

Further, during this interim period, DTV sets with different generation chips can be examined for performance both in weak and strong signal areas. For example, DTV sets behavior can be documented under various conditions. This information will be valuable so that accurate information can be documented and disseminated to the general public so that it can be a full partner in the DTV experience. This additional time to allow for consumer awareness will avoid public confusion and will enhance the adoption of DTV by the general public.

As indicated in the trade press, the Commission has recently already addressed an issue of DTV interference to the existing service area by the inauguration DTV service.¹ It can be anticipated further that areas of reception difficulty and controversy can arise as more DTV stations commence operation or increase their effective radiated power. This cited event² transpired when less than one-half of the DTV stations begun transmitting and of those that commenced operation did so under lower than authorized power.

Therefore, it is requested that for an orderly transition to DTV that sufficient time be given so that both the FCC and the broadcast industry can collect, study, and analyze various environmental situations and make appropriate assessments so that the public can benefit.

At present in order to foster an orderly transition, the FCC does not have in its rules or policy a simple means by which a DTV broadcaster can vary its power in order to make the assessment requested in Paragraph 25. It is recommended that the FCC devise a simple mechanism of notification which permits DTV broadcasters to vary their DTV effective radiated power (within a defined range) with FCC approval.

¹WBOC-TV, Salisbury, Maryland and WHRO-TV, Hampton-Norfolk.

² Ibid.

In this interim period, a comprehensive understanding of the various interference mechanisms whether DTV to DTV, DTV to NTSC, and actual DTV receiver performance will allow the establishing of specific dates for lifting interference protection in a realistic manner and allow the FCC to effectively use its resources rather than developing policy on a case-by-case basis.

Based on initial inspection of the coverage achieved by STA operations specifying facilities that fulfill the community coverage requirement, these STA facilities in many instances will serve a substantial portion of its NTSC service area. Therefore, during this interim period, it is recommended that the special temporary authority operation³ that achieves the community coverage requirement will serve as a good foundation for the further testing envisioned by the FCC.

The above will allow the determination of a “use or lose it” for those stations that have elected to specify a transmitter site within 20 km (four times the 5 km allotment criteria) of this allotment.

For those stations that have elected to move beyond that 20 km (unless there are unusual circumstances) should relinquish their protection to their allotment facility. This will serve as a first step in moving the transition to its final conclusion.

Interference Protection for Analog and Digital Services in TV Channels 51-69

³This testing can commence in some instance with only the R-F plant constructed.

The FCC seeks comments on protection of analog and digital television service in TV channels 51-69 as a necessary step in moving forward the transition to DTV. This difficult issue must be addressed such that flexibility and maintaining the ability of existing NTSC maximized DTV facilities to remain competitive as each progress to a channel “within the core”. One area is to permit individual stations with out-of-core facilities to begin discussions and potential arrangements with existing broadcasters who will be surrendering an “in-core” channel to be used for the out-of-core facility. As that process begins and receives the FCC approval then the initial step of out-of-band clearing can result. This combined with the three alternatives outlined in Paragraph 47 of the NPRM will serve to give both industry and the FCC a mechanism to establish new non-broadcast service without impeding the current NTSC or DTV service.

The FCC seeks comment on the definition of “actual” parameters under Sections 90.545(c)(i)(ii) and 27.60(d)(i)(iii) and notes the three types of facilities that are eligible for interference protection. As offered earlier, an FCC decision at this juncture is premature as the record is insufficient to permit an accurate assessment. This assessment can occur once sufficient testing is permitted by individual broadcasters to determine what facilities need to be built and maintained in order to achieve replication and serve the general public. Other issues arise concerning replication. For example, there is an insufficient record to determine the effective radiated power that must result if a channel in the band 2 through 6 is to be used. Currently it is believed that impulse and other noise environment issues

will limit the effectiveness of these channels⁴ for use for DTV based on the allotted effective radiated power. It is believed that a record needs to be developed such that a realistic engineering assessment can be made regarding these low-band VHF channels. The use of these channels for DTV offers the prospect of helping to relieve the allocation burden in the band 7 through 51 rather than these stations electing to remain on their allotment channels.

International Allocation

A further constraint to an orderly transition is evident regarding the uncertainties created along the border areas and effective coordination with the neighboring administration. Currently the information in the CDBS does not provide sufficiently accurate information of the neighboring administrations' current inventory and request for changes to permit detailed studies to occur based on complete information. There are many instances where the absence of complete, accurate, and up-to-date information regarding neighboring administration's proposals have resulted in delays and wasted effort by industry and the Commission.

This will be more evident as various parties seek to return to their NTSC channel for their final DTV facility. A further complication arose for stations attempting to comply with the Community

⁴There are approximately 300 stations in the channel 2-6 band.

Broadcasters Protection Act of 1999. This act required stations to file their maximization requests by May 1, 2000.

Many stations elected to maximize their facilities. However, little information was available regarding other administrations' intentions or planning factors and therefore these filings occurred without benefit of this information. For example, the *Letter of Understanding* between Canada and the United States was released months after the May 1, 2000 maximization deadline and did not include the maximization requests with the Commission. These maximization requests have been hampered by the lack of complete, up to date, and accurate documentation by neighboring administrations. This data vacuum, if not filled, will serve to hamper stations⁵ electing to return their DTV facility to their NTSC channel.

Further, the FCC is urged to examine in a constructive manner and assist where possible those domestic stations within the coordination zones that desire to return to their NTSC channel with the DTV operation and achieve replication. This will ensure that areas near the border do not suffer substantial loss of coverage.

⁵It is noted that there are over 500 stations within the coordination zones. These stations, if impacted by coordination concerns, will potentially impact stations domestically outside the coordination zone.

Domestic Allocation

With reference to returned channels and their availability for use by other entities, the FCC should consider making these channels available for educational station use with a requirement that the proposed facility basically serve “under-served area”.

Other

The FCC raises the issue of whether or not single frequency networks should be considered as an augment to providing service to such difficult reception areas that are within the predicted noise-limited contour. Support is given by this firm provided the system results in no greater interference to other authorized facilities than would be allowed under the current de- minimis guidelines. Primary status would be essential for use as a viable maximization option.

Clarification is sought concerning the meaning of question (b) of FCC Form 301. It states, “It will operate from a transmitting antenna located within 5.0 km (3.1 miles) of the DTV reference site for this station as established in 47 CFR Section 73.622.” Is this statement applicable to allotments authorized pursuant to Docket 87-268 and to changes of DTV channels in Section 73.622 of the FCC Rules performed by rule making?⁶

⁶It is noted that under the ordering clause in a Report and Order that the language specifically amends the DTV Table of Allotments, Section 73.622(b) as of a certain date.

Summary

The FCC has seen considerable progress since January 2001. It is believed if sufficient time is permitted for broadcasters to further investigate the replication and ERP issue further progress will be achieved. Also, if allocation and pending notifications from Canada and Mexico can be a part of the CDBS, then additional efficiency will result.